

REMARKS

Status of the Claims

Claims 1 – 29 are pending. No claims have been canceled or withdrawn from consideration.

Claim Amendments

The claim amendments are made without prejudice, and without disclaimer of the canceled and/or modified subject matter. Indeed, “[t]he language in the ... claims may not capture every nuance of the invention or describe with complete precision the range of its novelty.”¹ Thus, “[t]he scope of [the present claims] is not limited to [their] literal terms but instead embraces all equivalents to the claims described.”²

The amendments to claims 5, 11, 12, 13, and 17 are not made for a substantial reason related to patentability and do not add new matter, because the amendments merely place the claims in better form.

New claim 22 does not add new matter, because the claim finds support on page 3, lines 15 – 22 of the specification

New claims 23 – 28 do not add new matter, because the claims find support in claims 5, 11, 12, and 13 as originally presented.

New claim 29 does not add new matter, because the claim finds support in claim 17 as originally presented.

Claim Rejections

I. The Office action rejects claims 17 and 18, citing 35 U.S.C. §112, second paragraph.

This rejection is moot in view of the amendments to claims 17 and 18.

¹ *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 535 U.S. 722, 731, 122 S.Ct. 1831, 1837 (2002).

² *Festo*, 535 U.S. at 731, 122 S.Ct. at 1837.

- II. The Office action rejects claims 1 – 5, 11 – 14, 19, and 21, citing 35 U.S.C. §103(a), US 6,474,534 to Gabbianelli et al. (hereinafter, “Gabbianelli”), and US 5,562,799 to Ross et al. (hereinafter, “Ross”).

Gabbianelli and Ross relate to different fields of endeavor. Gabbianelli is classified in International Classification B32B, and Ross is classified in International Classification B21D. Gabbianelli refers to hydroforming, as such, (See column 1, lines 19 – 31) or welding sections together and hydroforming afterwards. Gabbianelli does not suggest the hydroformed tube can be used in a container. Gabbianelli does not suggest adding a base and/or optionally a top. Ross relates only to a metallic can having a peelable lid. Ross does not describe how the can body in any way should look or how it is made. Ross does not even provide information as to whether the can has a circumferential wall and a separate base, or whether the can is one piece. When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. The Office action errs by failing to provide evidence that design incentives and other market forces would have prompted the combination of Gabbianelli and Ross.

Gabbianelli describes hydroforming a tubular structure. The tubular structure can be formed from two tubular members joined by electromagnetic pulse welding. The two tubular members can differ in diameter. The hydroformed tubular structure can have a variety of cross-sectional shapes. Ross describes an apparatus for sealing peelable lids to cans. The Ross apparatus squeezes a thermoplastic lid 15 and a mounting flange 18 together at a constant fusing pressure.

Based on hindsight, the Office action asserts it would have been obvious to use a hydroformed tube as shown in Gabbianelli for a wall in a can according to Ross. Yet, Ross does not describe the can wall in any way that would indicate the Gabbianelli tubular members would be suitable. In fact, Ross provides no description of the can wall other than to require it to have a mounting flange. The tubular structures produced according to Gabbianelli lack a mounting flange. Thus, the proposed combination would be inoperable.

Furthermore, a tubular structure of Gabbianelli with a lid as taught by Ross fails to meet all the requirements of the claimed invention. The present invention produces a container having a circumferential wall, a base, and optionally a top. The tubular structure of Gabbianelli does not have either a base or a top. Ross only teaches a top. Therefore, the combination of Gabbianelli and Ross would lack a base. No evidence of record establishes that a peelable lid according to Ross would provide a suitable base for holding pressurized fluid.

Applicants respectfully submit, at the time the present invention was made, it was novel and nonobvious to produce a container comprising a circumferential wall, a base, and optionally a top, at least the circumferential wall being made from metal, wherein the circumferential wall is produced by hydroforming before the base, and optionally the top, are attached to the circumferential wall and wherein the circumferential wall which is to be hydroformed is produced as a tubular blank. According to this novel and nonobvious method, bigger containers can be produced, having volumes of 5 liters, preferably of approximately 30 liters. These containers are suitable to hold pressurized fluid, for example, beer. The containers also have a relatively thin wall and are suitable for single use. Furthermore, the containers can be recycled in a simple way, because the base and optional top can be removed and the circumferential wall can be flattened. The steel circumferential wall and plastic base and top can all be made from recyclable materials.

It is also submitted claims 2 – 5, 11 – 14, 19 and 21 further distinguish over the references.

Regarding claim 12: Ross provides no reason for a person having ordinary skill in the art to assume the peelable lid could withstand a maximum operating pressure of 6 bar, as claimed in claim 12. In fact, Ross makes clear at column 1, lines 38 – 42 that the peelable lids are easily opened by children. The Office action takes Official Notice that containers are known to be between 5 and 30 liters and are pressurized. Applicants respectfully request that authority be produced to support this Official Notice statement in accordance with *In re Chevenard*, 139 F.2d 711, 713, 60 USPQ 239, 241 (CCPA 1943). If the Examiner cannot produce authority to support the Official Notice statements, they should be withdrawn.

Regarding claim 22: New claim 22 requires the circumferential walls for two or

more containers to be hydroformed as a single unit. The Office action notes a compound blank for two or more tubular structures is shown in Figure 5 of Gabbianelli. However, Gabbianelli does not teach separating the compound blank after hydroforming.

III. The Office action rejects claims 6 – 8 and 20, citing 35 U.S.C. §103(a), Gabbianelli, Ross, and US 4,941,583 to Gerhard (hereinafter, “Gerhard”).

As discussed above, the proposed combination of Gabbianelli and Ross would be inoperable.

Furthermore, claims 6 and 20 require the base and top to be made from a plastics material, and to be connected by a rigid tie rod. Ross does not teach a base made from a plastics material. Ross relates only to securing a peelable thermoplastic lid 15 to a can body 21. Ross provides no apparent reason to provide a peelable lid as a base for a can.

Gerhard relates to a tank container in which not even a base is present as a separate part. The combination in the Office action is picking and choosing and fails to look at the reference as a whole. For example, Gerhard explicitly mentions two casing portions 10, 11.

Additionally, the proposed combination would be inoperable, because Gerhard requires a flat tension plate 18 having its longitudinal edges bolted or welded to flanges 16, 17 of a top shell 15 of a top longitudinal member 13. According to Gerhard, a profile element (I-beam 19) must be fitted between the top shell 15 and the plate 18. The tie rod 14 is welded to the I-beam 19. A skilled artisan would not have reasonably believed these required features could be added to Ross’s peelable lid. Moreover, adding these required features to Ross’s peelable lid would render the lid unpeelable and, therefore, unsuitable for its intended purpose.

Claim 7 depends from claim 6 and requires the base, top, and tie rod to be produced as a single unit. The proposed combination would be inoperable, because Ross provides no way to accommodate a base, a top, and a tie rod produced as a single unit. According to page 6, lines 38 – 44, Ross requires each can/lid combination to pass between opposing first and second conveyor assemblies 34 and 37, where thermoplastic lid 15 and mounting flange 18 are squeezed together.

Claim 8 depends from claim 6 and requires the rigid tie rod to be at least partially hollow, in order to act as a discharge passage for fluid in the container. This claim limitation would not be met by the proposed combination, because Gerhard indicates tie rod 14 merely serves to allow liquid entering the spillover trough to be discharged from the open bottom 26 of the tube (See FIG. 1). Fluid from the container cannot be discharged through the tie rod.

IV. The Office action rejects claims 9, 15, 17, and 18, citing 35 U.S.C. §103(a), Gabbianelli, Ross, and US 3,358,487 to Brejcha et al. (hereinafter, “Brejcha”).

As discussed above, the proposed combination of Gabbianelli and Ross would be inoperable. Furthermore, no evidence of record establishes that the pulsed magnetic forming (PMF) process of Gabbianelli could be combined with the electro-hydraulic forming method of Brejcha.

V. The Office action rejects claim 10, citing 35 U.S.C. §103(a), Gabbianelli, Ross, US 3,875,651 to La Croce (hereinafter, “La Croce”).

As discussed above, the proposed combination of Gabbianelli and Ross would be inoperable. Furthermore, referring to Figures 7 – 9, in order to releasably attach lid 24, La Croce requires an overcap 22 to engage a radially outwardly protruding annular bead, such as curl bead 70 on an annular paint can ring. The proposed combination would be inoperable, because Gabbianelli does not provide an outwardly protruding annular bead.

VI. The Office action rejects claim 16, citing 35 U.S.C. §103(a), Gabbianelli, Ross, and US 4,049,122 to Maxwell (hereinafter, “Maxwell”).

As discussed above, the proposed combination of Gabbianelli and Ross would be inoperable.

Fee Authorization

The Director is hereby authorized to charge any deficiency in fees filed, asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account 14-1437. Please credit any excess fees to such account.

Conclusion

The present application is in condition for allowance, and applicants respectfully request favorable action. In order to facilitate the resolution of any questions, the Examiner is welcome to contact the undersigned by phone.

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